

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	12cr00350
Plaintiff,	:	
V.	:	
	:	United States Courthouse
	:	Brooklyn, New York
PETER LIOUNIS,	:	January 10, 2014
Defendant.	:	11:30
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR PRE-TRIAL CONFERENCE
BEFORE HONORABLE I. LEO GLASSER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Eastern District of New York
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BY: MICHAEL YAEGER
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Proceedings recorded by mechanical stenography, transcript
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1 THE CLERK: Criminal Cause for Pretrial Conference,
2 the United States versus Peter Liounis. Please state
3 appearances for the record.

4 MR. LERER: Justin Lerer and Michael Yeager for the
5 United States. Good morning, your Honor.

6 THE COURT: Good morning.

7 MR. GOLD: Standby counsel, Michael Gold. Good
8 morning, your Honor.

9 THE DEFENDANT: Peter Liounis. Good morning,
10 your Honor.

11 THE COURT: Good morning, Mr. Liounis. I asked you
12 to come in today so that we can resolve matters, pretrial
13 matters, so that we're all on the same page as to how we're
14 going to proceed with respect to jury selection and things of
15 that sort. Before I get to that, it's my understanding that
16 there are no outstanding motions pending before me now; is
17 that correct?

18 MR. LERER: Your Honor, that's not the Government's
19 understanding. We believe there are four motions from the
20 Government that are still outstanding.

21 THE COURT: Which ones are those?

22 MR. LERER: They are a motion to admit 404B
23 evidence, related to recorded calls between the defendant and
24 a victim in a prior scheme, a related scheme. That victim's
25 last name is Moldrem, M-o-l-d-r-e-m. There's a motion to

1 admit a call recorded at the MDC, at the prison. There's a
2 motion regarding the fact -- our belief that forfeiture could
3 be decided by the Court at sentencing, and would not be --
4 need to be presented to the jury, and there is a final motion
5 regarding the Government's cross-examining the defendant on
6 prior convictions for crimes involving dishonesty or false
7 statement.

8 At the last conference, the Court had gone through
9 the motions and asked the defendant if he wanted to file
10 something. Defendant hasn't filed anything.

11 THE COURT: Okay. Why don't we deal with those now.
12 We can dispose of those right now.

13 Mr. Liounis, you're prepared to deal with that?

14 THE DEFENDANT: Your Honor, I'm not prepared to deal
15 with that today. I started writing -- I started working on
16 these motions. I plan on submitting them very soon to
17 the court in writing.

18 THE COURT: Very soon, meaning what? I'll give you
19 a week; is that enough?

20 THE DEFENDANT: Excuse me?

21 THE COURT: A week.

22 THE DEFENDANT: One week?

23 THE COURT: These motions have been pending now for
24 some time. I thought I had disposed of all of them.

25 THE DEFENDANT: Could I just be clear on the four

1 that we're talking about? I just want to make sure the 404B;
2 is that what I was told?

3 THE COURT: It's a 404B motion.

4 THE DEFENDANT: MDC call?

5 THE COURT: Yes.

6 THE DEFENDANT: Something about forfeiture?

7 THE COURT: Yes.

8 THE DEFENDANT: And the last part was
9 cross-examining myself or cross-examining the agents? I think
10 there was something in good faith with the agents.

11 THE COURT: If you're going to be testifying on your
12 own behalf, as you have a perfect right to do, Mr. Liounis, as
13 I understand the cross-examination would be of you.

14 THE DEFENDANT: All right. Okay. But there was
15 also -- I believe a fifth issue with -- the Government had
16 mentioned something about the agents testifying and myself
17 being able to cross-examine them in good faith.

18 MR. LERER: Your Honor, you granted our motion
19 in limine previously on that issue.

20 THE COURT: Okay. Apparently I decided that motion.
21 I don't recall it, but, apparently, I have.

22 THE DEFENDANT: I understand it. The problem is
23 that was ruled prior to me receiving that. I never answered
24 that because I never received that.

25 THE COURT: You never received the motion?

1 THE DEFENDANT: That's right. I never received
2 that. I received an e-mail from my standby counsel the day
3 before I came here. They said if, I'm not mistaken, to bring
4 up some of these issues, but I did not see it, didn't read it.

5 THE COURT: This e-mail that you received from
6 Mr. Gold --

7 THE DEFENDANT: Yes.

8 THE COURT: -- was that an e-mail that informed you
9 of that motion?

10 THE DEFENDANT: It didn't inform me, really, of
11 much. I don't know if you remember. I can get the e-mail for
12 you.

13 MR. GOLD: Sure.

14 THE DEFENDANT: I mean -- but it would have had to
15 do with something.

16 MR. LERER: I can actually make a --

17 THE COURT: What?

18 MR. LERER: I think that's probably both untrue and
19 potentially irrelevant. The motion was filed on October 25th,
20 your Honor. The Court discussed the motion in -- at
21 conferences on the 27th, I believe. And the first were the
22 two conference dates, I believe, that we have. There were two
23 conferences this Court held after we filed the motion, and
24 the Court discussed the motion at both conferences, and
25 the Court issued a written opinion -- granting that portion of

1 the motion, and the --

2 THE COURT: All right. So there are four motions,
3 Mr. Liounis, that you wish to respond to. How much time do
4 you need?

5 THE DEFENDANT: If it's okay, I need seven to
6 ten days. Would that be okay?

7 THE COURT: That will be fine, Mr. Liounis. I'll
8 give you ten days. Okay?

9 THE DEFENDANT: I appreciate that.

10 THE COURT: You're very welcome. Is there anything
11 else that's outstanding or that has to be discussed?

12 MR. LERER: Yes, your Honor. The Government has a
13 few issues that we'd like to raise.

14 THE COURT: Go ahead.

15 MR. LERER: The first is I want to make a record
16 regarding plea negotiations, in light of Supreme Court
17 precedent that's come down recently. The Government had made
18 offers to the defendant before they have all been withdrawn.
19 They were not accepted and now all withdrawn. This morning we
20 communicated with standby counsel to find out if the defendant
21 wanted to talk about further plea negotiations. He's refused
22 to even talk to us. We expect after conviction he will face
23 guidelines of 360 months to life. We plan to make no further
24 offers.

25 THE COURT: Okay.

1 MR. LERER: Then there are some other issues to
2 raise. There's the issue of experts. The Court will recall
3 that the Court precluded a voice expert but allowed Cell Site
4 experts for both sides. And the Court, in a written opinion,
5 said that a Daubert Hearing would be held if there was no
6 stipulation on qualifications. At this point, due to the very
7 ambiguous notice of the testimony that the defendant provided,
8 we simply can't even come to a position. We don't feel on
9 notice of what the defendant's Cell Site expert is going to
10 testify about, so, you know, we would request that the court
11 inquire on that matter.

12 THE COURT: What else?

13 MR. LERER: The Government served alibi demands on
14 October 22nd and amended it on October 27th, two-and-a-half
15 months ago. The defendant was required to provide written
16 notice of an intended alibi ten days after receiving notice,
17 and we've received no notice of an alibi defense. So, again,
18 we'd request to know whether the defendant intends to offer an
19 alibi defense and that he then comply with Rule 12.1A.

20 THE COURT: Is that it?

21 MR. LERER: That's it, your Honor. Thank you.

22 THE COURT: With respect to those two matters,
23 Mr. Liounis, when you first requested to proceed pro se, for
24 the purpose of determining whether you should be permitted to
25 proceed pro se, I believe I asked you a number of questions

1 and then told you not only that it was inadvisable for you to
2 make that decision, you did; you have a perfect right to, but
3 I also told you that there will be no special consideration,
4 insofar as observing Rules of Evidence, rules of the court,
5 rules of criminal procedure, because you're proceeding pro se;
6 that you will be required to comply with the rules of the
7 court, and the rules of criminal procedure and the Rules of
8 Evidence.

9 Now, the rules provide that if you're going to be
10 calling an expert witness, you should provide the Government
11 what the prospective testimony, proposed testimony, of the
12 expert, what it is that he's going to be testifying to.
13 You've been asked to do that some time ago and I'm told that
14 you haven't done it. I could, I suppose, preclude you from
15 even calling that expert if you're not going to comply with
16 the rule, but I'm going to give you five days, not ten, five,
17 to tell the Court -- not the Court but the Government what it
18 is that expert is proposing to testify about.

19 Second, I'm told that you were asked back in October
20 to provide the Government with any alibi defense that you
21 would propose. You were served but haven't done that either.
22 Again, I could preclude you from offering any alibi defense at
23 all if you're not going to provide the Government with what
24 your alibi is, as the rules of criminal procedure provide. So
25 I'm going to give you five days to tell me what your alibi

1 defense might be. Is there anything further with respect to
2 pretrial matters?

3 MR. LERER: No, your Honor. I would just call the
4 defendant's attention to the fact that Rule 12.1A makes very
5 clear the nature of the disclosure that must be made if the
6 defendant wishes to present an alibi defense. It's quite
7 thorough. Thank you, your Honor, for your time this morning.

8 THE COURT: With respect to other matters, I'm going
9 to request -- have the parties been given a copy of my
10 criminal pretrial rules?

11 MR. LERER: Yes, sir.

12 THE COURT: Mr. Kessler?

13 THE CLERK: Yes, Judge.

14 THE COURT: If you're going to have proposed
15 voir dire questions, I'd like you to submit those to me by the
16 22nd of January. Also request the charge or proposed jury
17 instructions by the 22nd of January. So that's requests, the
18 charge and proposed jury instructions, by the 22nd of January.
19 That's just five days before the trial date. Now, let me talk
20 to you a little bit about the way I go about selecting a jury.

21 First, will you give me some idea as to how long you
22 think this case will take to trial?

23 MR. YAEGER: We believe, your Honor, that the
24 Government's case in chief could take two weeks. Okay.

25 THE COURT: All right. I would suspect that we

1 would need four alternates, probably, would be appropriate.
2 Now, with respect to jury selection, let me tell you how I go
3 about selecting the jury. When the panel first arrives in
4 this courtroom, they will obviously be sworn. I will give
5 them some preliminary information as to why they're here, the
6 nature of the case. I'll read the indictment to them and
7 inform them that the indictment is not evidence, inform them
8 of the defendant's presumption of innocence and so on.

9 And I will then direct a series of general questions
10 to the entire panel. I will have whatever voir dire requests
11 have been submitted to me five days before that, and such
12 other voir dire questions as I deem to be appropriate, general
13 questions which I wouldn't have to repeat as I conduct an
14 individual voir dire after I'm finished with those. And I
15 will ask the prospective members of the jury to either jot
16 down any of those general questions that they would answer yes
17 to. I'll try to bear clearly in mind what questions they
18 would answer yes to. I will then turn to the members of the
19 prospective jury in the jury box and proceed to inquire of
20 each of them the general questions, pretty standard questions
21 that are asked of prospective jurors.

22 When I've completed asking all of those already
23 seated in the jury box -- and, by the way, I should have told
24 you that initially. Mr. Kessler, the deputy clerk, will pick
25 names out of a drum and sit persons in the jury box. Those

1 general questions will be addressed not only to the jurors
2 sitting out in the courtroom but also to those already seated
3 in the jury box. After I've complete the voir dire, parties
4 may then exercise peremptory challenges.

5 The Government has six peremptories, the defendant
6 has ten. And peremptories will be exercised by rounds. After
7 I have completed the voir dire of the jurors in the box, I
8 will ask the defendant and the Government to come up to the
9 sidebar and exercise their peremptory challenges. The
10 Government will go first in rounds one, three and five. The
11 defendant will go first in rounds two, four and six. The
12 Government will have one peremptory in each of the six rounds.
13 The defendant will have two peremptories in the first four
14 rounds, and one in the fifth and one in the 6th.

15 At the conclusion of the fifth round, assuming that
16 you have each exercised your peremptory and excused two
17 jurors, since you each would have one challenge in the fifth
18 and sixth rounds, instead of calling two to replace those, you
19 will call four. So you will know, or I'll call six, when I
20 have four alternates, so you will know exactly who your
21 alternates are, and you have one peremptory for two
22 alternates.

23 When the peremptories have been exercised, I will
24 ask the parties whether the jury is satisfactory, and
25 hopefully the answer will be yes, and I will then have the

1 jury sworn and proceed to give the jury preliminary
2 instructions, to make sure their responsibility, that they're
3 the sole judges of the fact, some notion of how long the trial
4 was expected to take, what the trial schedule is like, and
5 things of that. That generally takes about 8 or 10 minutes.

6 I will then turn the proceedings over to counsel to
7 make opening statements. The Government will make its opening
8 statement first, and the defense will make its opening
9 statement thereafter. I feel very, very strongly about the
10 fact that opening statements should be opening statements and
11 not summations. An opening statement should simply tell the
12 jury what you believe the evidence in this case will prove.
13 And if you're going to get into a long harangue and a long
14 summation, I'll cut you off. Although, I dislike doing that.

15 Mr. Liounis, I think I told you at least twice now,
16 but I'm going to tell you again, you are entitled to no
17 special consideration -- I think I made some indication of
18 that in the last memorandum and order that I issued -- because
19 you proceed pro se. You will be expected to comply with
20 appropriate courtroom procedure and protocol and conduct
21 yourself accordingly. When opening statements have been
22 concluded, the Government will then proceed to present its
23 case.

24 Mr. Liounis, if you have objections to any question
25 or evidence which the Government seeks to introduce, of course

1 you may make your objection. Do it in an ordinarily fashion,
2 indicating that you're objecting, and if I have some doubt as
3 to what it is -- what the purpose of your objection is, I'll
4 ask you to explain it to me. When each witness has included a
5 direct examination, you can cross-examine, but, again, you're
6 required to comply with the Rules of Evidence, which includes
7 framing questions as appropriately, as the law requires, and
8 as you can manage to do.

9 And when the Government has concluded presenting its
10 evidence, the Government will rest. The Government will not
11 rest, the Government will say it's concluded its case. And
12 you can make your Rule 29 motion. If you don't know what that
13 is, I'm sure Mr. Gold might help you and explain it to you.
14 That motion is normally made by a defendant at the end of the
15 Government's case. You can then proceed, if you wish, to
16 testify for yourself and call witnesses to testify for you.

17 I don't know whether you intend to or do not intend
18 to testify on your own behalf. If you are going to testify on
19 your own behalf, and you have an absolute right to do that,
20 the question which then, obviously, presents itself as to how
21 that testimony is going to be presented. Hypothetically, I
22 suppose, you can ask yourself questions and then proceed to
23 answer them, or you can testify in a narrative fashion. Doing
24 that will present a series of problems, because if you're
25 going to tell your story in a narrative fashion, your story

1 will also have to comply with Rules of Evidence, primarily
2 hearsay, and all other rules which may be appropriate. And in
3 the 31 or nearly 32 years that I have been here, I have had
4 just one other case in which the defendant elected to proceed
5 pro se, but he didn't testify on his own behalf. So I haven't
6 experienced a pro se defendant testifying on his own behalf,
7 but I'm perfectly aware of what the problems may be.

8 And the thought occurred to me that it might be a
9 consideration, Mr. Liounis, that you prepare questions that
10 you would have asked yourself or a defendant testifying on his
11 own behalf, prepare them in writing, and I'll consider
12 permitting Mr. Gold to ask the questions and have you answer
13 them. That would provide an orderly presentation of such
14 evidence which you wish to present on your own behalf, and it
15 would enable evidentiary rules to be made in an intelligent
16 and orderly fashion with respect to the questions. So you may
17 want to consider that. And it may be that on the 22nd of
18 January I'll ask you all to come back again and discuss that
19 aspect of the trial procedure.

20 MR. LERER: Your Honor, could I be heard briefly
21 on --

22 THE COURT: What?

23 MR. LERER: Can I be heard briefly with another
24 matter or two?

25 THE COURT: Let me finish.

1 MR. LERER: I apologize, your Honor.

2 THE COURT: When you have presented all your
3 evidence, you'll tell me that you're resting. The Government
4 may or may not present a Government case, and there will come
5 a time, hopefully, when I'll hear that both sides rest. You
6 may want to renew your Rule 29 motion, at that point, and then
7 we'll proceed to summations. The Government will come up
8 first. You will come up thereafter, Mr. Liounis, and the
9 Government will have an opportunity to reply. Before all that
10 happens, before summations begin, we will have a charging
11 conference.

12 I will go over the charge I propose to present to
13 the jury. Hopefully I will have prepared a charge by then and
14 have given you copies of it to consider. And making any
15 objections to portions of the proposed charge, I'll submit
16 such additions or amendments that you wish to make. And after
17 you've both summed up, I'll charge the jury and they'll return
18 a verdict after they've had an opportunity to deliberate. And
19 that's the way we will proceed.

20 Now, Mr. Lerer, you said you want to bring some
21 other matters to my attention.

22 MR. LERER: Briefly, your Honor, I just wanted to
23 note we'll still be complying with the Court's pretrial order,
24 and we may file a trial brief setting out a few evidentiary
25 issues. I just wanted to alert the Court to that.

1 THE COURT: Pretrial order provides for that, if
2 there are any evidentiary issues, any evidentiary questions.
3 Trial order indicates those should be made, I think, about ten
4 days before trial, whatever it is.

5 MR. LERER: It says five days.

6 THE COURT: Whatever it is, if you need ten days,
7 that's fine.

8 MR. LERER: I think they will not be very
9 challenging issues for your Honor, and I just wanted to be
10 clear as to a few other issues.

11 THE COURT: Before you go into that, the four
12 motions you said are still open, the expert witness
13 information, the alibi information, telephone call from the
14 MDC, and some other 404B evidence with respect to somebody
15 called -- some testimony in another trial; was that what I
16 remember?

17 MR. LERER: No, your Honor. I can just go through
18 them. The MDC call as your Honor stated --

19 THE COURT: Somebody named Moldrem?

20 MR. LERER: Moldrem, it's not another trial, it's a
21 recording of a related fraud.

22 THE COURT: With respect to those, when Mr. Liounis
23 submits his reply, if I think oral argument is necessary, I'll
24 ask you. If I don't think it's necessary, I'll decide on the
25 papers.

1 MR. YAEGER: Yes, your Honor.

2 THE COURT: Now, what do you want to say?

3 MR. LERER: Just housekeeping matters, as it were,
4 what hours will the Court be sitting, generally speaking?

5 THE COURT: Generally start at 10:00. It's not
6 written in stone. May be I'll start at 9:30, somewhere around
7 there. And we generally take a brief recess at about 11:30.
8 We recess for lunch at 1:00 and generally resume at 2:00.
9 Recess at around 3:30, briefly, and then conclude, generally,
10 around 5:00. I will probably just set Mondays through
11 Thursdays and not Friday, but that's not written in stone
12 either. Depending upon whether I do or don't have a Friday
13 calendar, I may continue to sit on Fridays as well. What
14 else?

15 MR. LERER: As to the form of objections, should we
16 just state objection? Should we -- no stating of the reason?

17 THE COURT: If I'm not clear in my mind as to what
18 the nature of the objection is, I'll ask you to tell me why.

19 MR. LERER: Yes, sir.

20 MR. YAEGER: Yes, your Honor.

21 THE COURT: More often than that, I think I can
22 understand what the objection is.

23 MR. LERER: Thank you.

24 THE COURT: There are times when I don't. I will
25 appreciate your clarification. Anything else?

1 MR. LERER: No, your Honor, not from the Government.

2 THE DEFENDANT: I have a few issues, your Honor.

3 THE COURT: Sure.

4 THE DEFENDANT: First, on the alibi demands that
5 needs to be within five days. What exactly -- I was confused
6 as to what type of material are they asking for, the
7 Government, as far as an alibi. Because I don't know if
8 they're looking for phone calls, witnesses. I'm a little
9 confused with that.

10 THE COURT: Well, that's why I asked Mr. Gold to
11 assist you. He can help you with that. If, for example --
12 just to give you an example, Mr. Liounis, the Government is
13 going to present evidence that something happened on a certain
14 day at an address in Queens, and you propose to present
15 evidence that on that day you were in Tanzania, that would be
16 an alibi. All right.

17 THE DEFENDANT: And, now, here's my thing, what
18 happens if I can't remember these dates? Because as I
19 approach trial, I do get my investigator someone to get me
20 something factual, am I going to be barred from bringing that
21 into trial if it proves, like, one of these dates or two of
22 these dates that I couldn't get prior to the five days?

23 THE COURT: What is the problem with respect to the
24 day?

25 THE DEFENDANT: I have documents being researched,

1 ATM withdrawals. I'm working on trying to figure out these
2 times and dates where I might have been.

3 THE COURT: That's not a question of alibi. If the
4 Government's offering evidence that something happened on a
5 certain day, and you have some documentary evidence which
6 indicates that that's not the date, it was on another date,
7 that's not an alibi. That's factually evidence which the
8 Government has presented.

9 THE DEFENDANT: Oh, okay. Okay. As far as my
10 personal witnesses, is that also tied to that five-day limit,
11 my personal witnesses that are testifying or just experts?

12 THE COURT: Expert. Provide the testimony of the
13 expert. It would be helpful if you have a list of witnesses
14 that you can provide in advance. How many witnesses do you
15 contemplate calling?

16 THE DEFENDANT: Personal or expert? I'm sorry. I
17 didn't hear you.

18 THE COURT: Beside an expert, how many witnesses do
19 you contemplate calling?

20 MR. GOLD: Close to 10.

21 THE COURT: Pardon?

22 THE DEFENDANT: Close to 10 witnesses.

23 THE COURT: If you have the names of those
24 witnesses, it would be good if you can submit those names in
25 advance.

1 THE DEFENDANT: I'll definitely do that. Also, one
2 more thing, your Honor, you mentioned it was an order dated
3 December 18th, 2013. It is a memorandum in order that you
4 just spoke about a few minutes ago; I just want to let
5 the Court know I did reply to that, and I brought a copy, and
6 I would like to submit it and ask that that be filed, if that
7 is okay. This is your copy. I'm sorry, I couldn't make more
8 than one, but I did my best. Who do I give that to?

9 THE COURT: Mr. Kessler.

10 THE DEFENDANT: Thank you.

11 THE COURT: You'll see that it's on ECF.

12 MR. LERER: I think it's already on ECF. I think
13 this document is on ECF. We'll read it. Your Honor, the
14 defendant's comments raised just one or two other issues. I
15 just want to note we have not received a speck of discovery
16 from the defendant, nor any 3500 material. I just want to
17 make sure the defendant is aware of reciprocal discovery
18 obligations.

19 THE COURT: Anything else?

20 MR. LERER: No, sir.

21 THE COURT: Thank you very much. I'll see you on
22 the 22nd.

23 MR. GOLD: Did we set a time?

24 THE DEFENDANT: Just have one more -- I'm sorry,
25 your Honor, just one more quick thing. I have a motion that

1 I'm working on, motion in limine to preclude evidence. What's
2 my deadline on submitting that?

3 THE COURT: There have been so many deadlines on so
4 many motions, I don't know whether I ever did provide a
5 deadline. I think in the criminal pretrial order there may be
6 a deadline for motions, which I'm sure has long since passed.
7 But if you got a motion that you wish to make filed together
8 with the expert information that you're to submit five days
9 from now. Okay?

10 THE DEFENDANT: Okay.

11 THE COURT: Anything else?

12 MR. GOLD: I just don't think we set a time for the
13 22nd.

14 THE COURT: January 22nd. How about 10:00 o'clock?
15 Is that a good time, Mr. Kessler?

16 THE CLERK: Two matters at 10:30. You have one
17 sentencing, I'm sorry, at 10:30 on that day.

18 THE COURT: What kind of matter is it?

19 THE CLERK: It's a sentencing and a violation of
20 supervised release.

21 THE COURT: Why don't you set it down for 11:30 for
22 this.

23 THE CLERK: 11:30 a.m.; is that okay?

24 MR. LERER: Thank you.

25 MR. YAEGER: Thank you, your Honor.

1 THE COURT: 11:30 on the 22nd of January. And if I
2 need oral argument on these four motions that he's going to
3 reply to, I'll let you know. Otherwise, I might -- my
4 intention is to decide the motions on the papers. All right.
5 There's nothing further. Thank you very much.

6 MR. LERER: Thank you, your Honor.

7 MR. YAEGER: Thank you.

8 MR. GOLD: Thank you.

9 (Proceedings adjourned.)

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